

BEFORE THE  
SHORELINES HEARINGS BOARD AND  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF SUBSTANTIAL  
DEVELOPMENT APPLICATIONS,

SAVE PORT SUSAN COMMITTEE,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY AND  
SEA HARVEST CORPORATION,

Respondents.

SEA HARVEST CORPORATION,

Appellant,

v.

SNOHOMISH COUNTY,

Respondent,

SAVE PORT SUSAN COMMITTEE,

Intervenor.

SHB No. 82-38

ECPA 14

ORDER ON MOTIONS

SHB No. 82-39

1 ISLAND COUNTY, )  
2 Appellant, )  
3 v. )  
4 STATE OF WASHINGTON, )  
5 DEPARTMENT OF ECOLOGY AND )  
6 SEA HARVEST CORPORATION, )  
7 Respondents, )  
8 SAVE PORT SUSAN COMMITTEE )  
9 Intervenor. )  


---

10 SEA HARVEST CORPORATION, )  
11 Appellant, )  
12 v. )  
13 ISLAND COUNTY, )  
14 Respondent, )  
15 SAVE PORT SUSAN COMMITTEE, )  
16 Intervenor. )  


---

17 and  


---

18 SEA HARVEST CORPORATION, )  
19 Appellant, )  
20 v. )  
21 STATE OF WASHINGTON, )  
22 DEPARTMENT OF GAME, )  
23 Respondent, )  
24 SAVE PORT SUSAN COMMITTEE, )  
25 Intervenor. )  


---

SHB No. 82-40

ECPA 14

SHB No. 83-3

PCHB No. 82-183

27 ORDER ON MOTIONS  
SHB Nos. 82-38, -39, -40, 83-3  
& PCHB No. 82-183: ECPA 14

1 Motions came for hearing before the Shorelines Hearings Board  
2 (Gayle Rothrock, Lawrence Faulk, Art O'Neal, Nancy Burnett and Rodney  
3 Kerlsake) on February 15, 1983 in Lacey. Respondent Department of  
4 Ecology (DOE) was represented by Charles W. Lean, Assistant Attorney  
5 General; Island County was represented by Alan R. Hancock, Deputy  
6 Prosecuting Attorney; Snohomish County was represented by Gordon W.  
7 Sivley, Deputy Prosecuting Attorney; Sea Harvest Corporation was  
8 represented by its attorney John E. Woodring; Save Port Susan  
9 Committee was represented by its attorney, Joel M. Gordon; Department  
10 of Game was represented by D. Anthony Weeks, Assistant Attorney  
11 General.

12 Having considered the motions, affidavits, contentions, and the  
13 files and records herein, the Board rules as follows:

14 1. All cases: Save Port Susan Committee's Motion to Intervene is  
15 granted. The pleadings filed in SHB No. 82-38 shall be accepted as  
16 its pleading in intervention.

17 2. PCHB No. 82-183: By stipulation between the original parties,  
18 the case will be dismissed by separate order.

19 3. SHB No. 82-38: Sea Harvest's Motion to Dismiss for lack of  
20 jurisdiction is denied. However, Save Port Susan Committee's request  
21 for review is dismissed for the reasons set forth in SHB No. 82-40.  
22 As a practical matter, the consolidation of the cases and Save Port  
23 Susan Committee's intervention in the other pending cases leaves the  
24 issues raised in this matter for future resolution.

25  
26 ORDER ON MOTIONS  
27 SHB Nos. 82-38, -39, -40, 83-3  
& PCHB No. 82-183: ECPA 14

1 4. SHB No. 82-39: Snohomish County's Motion for Summary Judgment  
2 on the grounds of res judicata/collateral estoppel is denied. There  
3 are genuine issues of material facts which are in dispute.

4 Sea Harvest's Motion for Summary Judgment on the grounds that it  
5 possesses an unconditional shoreline substantial development permit by  
6 retroactive application of the 1982 amendments to chapter 90.62 RCW is  
7 denied. While the distinction between procedure and substance in the  
8 particular application of the amendment is not clear, the effect of  
9 the amendment affects substantive rights. Therefore, the amendment in  
10 question should not be applied retroactively.

11 5. SHB No. 82-40: Island County's Motion for Summary Judgment on  
12 the ground that the 1982 amendments to chapter 90.62 RCW are  
13 inapplicable to Sea Harvest's shoreline development application is  
14 granted for the reason previously stated. Sea Harvest's cross motion  
15 for summary judgment is denied. This file is closed.

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
ORDER ON MOTIONS

SHB Nos. 82-38, -39, -40, 83-3  
& PCHB No. 82-183: ECPA 14

6. SHB No. 83-3: Island County's Motion for Summary Judgment on the grounds of res judicata/collateral estoppel is denied for reasons previously stated. Sea Harvest's Motion for Summary Judgment on the grounds of improper forum and retroactive effect of the 1982 amendments is denied.

DATED this 2<sup>nd</sup> day of March, 1983.

SHORELINES HEARINGS BOARD

*David Akana*

DAVID AKANA, Lawyer Member

*Gayle Rothrock*  
GAYLE ROTHROCK, Chairman

*Lawrence S. Paulk*  
LAWRENCE S. PAULK, Member

*Richard A. O'Neal*  
RICHARD A. O'NEAL, Member

*Nancy R. Burnett*  
NANCY R. BURNETT, Member

*Rodney M. Kerslake*  
RODNEY M. KERSLAKE, Member

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF SUBSTANTIAL  
DEVELOPMENT APPLICATIONS,

SEA HARVEST CORPORATION,

Appellant,

v.

SNOHOMISH COUNTY,

Respondent,

SAVE PORT SUSAN COMMITTEE,

Intervenor.

MODIFIED

SHB No. 82-39  
ECPA No. 14

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

SEA HARVEST CORPORATION,

Appellant,

v.

ISLAND COUNTY,

Respondent,

SAVE PORT SUSAN COMMITTEE,

Intervenor.

SHB No. 83-3  
ECPA No. 14

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the request for review of the denial of substantial development permit applications by Island County and by Snohomish County, came before the Shorelines Hearings Board, David Akana (presiding), Gayle Rothrock, Chairman, Rodney M. Kerslake, Nancy Burnett, Art O'Neal and Lawrence J. Faulk, on March 28, 30, April 25, 26, November 14, 15, 16 and 17, 1983, in Lacey, Washington.

(

Appellant was represented by John Woodring for a part of the presentation and by Mark Bennett for the remainder; respondent Island County was represented by Alan Hancock, Deputy Prosecuting Attorney; respondent Snohomish County was represented by Gordon Sivley, Deputy Prosecuting Attorney; respondent Department of Ecology was represented by Charles W. Lean, Assistant Attorney General; intervenor was represented by Leland Bass. Gene Barker and Associates of Olympia recorded the proceedings.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

#### FINDINGS OF FACT

##### I

Appellant Sea Harvest Corporation is located and does business from Camano Island, Washington. The company is the successor to some of the interests and equipment of English Bay Enterprises. The former president and principal of English Bay Enterprises, Ida Mae Wolfe, is the president and principal of Sea Harvest Corporation. Appellant leases 12,600 acres in the Port Susan and Livingston Bay areas. About 7000 of these acres are situated in Snohomish County. The remaining area is located in Island County.

##### II

Respondent Department of Ecology is the state agency with responsibility to process master permit applications under the Environmental Coordination Procedures Act (ECPA) (Chapter 90.62 RCW). Upon receipt of a properly completed application, the department

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
SHB Nos. 82-39 & 83-3, ECPA 14

1 notifies other agencies with a possible interest in the application.  
2 permits issued pursuant to chapter 90.58 RCW are included under this  
3 procedure.

### 4 III

5 Respondents Island County and Snohomish County have jurisdiction  
6 to grant or deny shoreline substantial development permits under  
7 chapter 90.58 RCW to applicants within their respective geographic  
8 limits. Both counties asserted their interest in the master permit  
9 application and required appellant to apply for substantial  
10 development permits.

### 11 IV

12 Intervenor Save Port Susan Committee is a loose-knit group  
13 comprising over 21 beach areas and 300-400 families in the area. The  
14 purpose of the Committee is to protect the bay from uses and  
15 developments incompatible with the existing rest, recreation and  
16 retirement uses.

### 17 V

18 On February 19, 1981, Sea Harvest applied for a shoreline  
19 substantial development permit from Snohomish County. The application  
20 requested a permit to test the effectiveness of modifications to a  
21 mechanical, hydraulic Hanks-type clam harvester in reducing the  
22 environmental effects of intertidal clam harvesting upon 7,000 areas  
23 in Livingston Bay and Port Susan. After the modifications had been  
24 inspected and documented, an operational test was proposed to study  
25 the trenching characteristics, behavior of the turbidity plume, and

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB Nos. 82-39 & 83-3, ECPA 14



1 noise levels on the beach. The application was part of a number of  
2 applications filed under ECPA.

3 On October 28, 1982, the Snohomish County hearing examiner denied  
4 the application. On November 4, 1982, that decision was appealed to  
5 this Board.

## 6 VI

7 As a result of its application under ECPA, Sea Harvest also  
8 applied for a substantial development permit (No. 0282) from Island  
9 County for the same purpose in February, 1982, on its leased tidelands  
10 in Island County.

11 On May 12, 1982, Island County, the lead agency for the shoreline  
12 permits, issued a Final Declaration of Non-Significance which  
13 determination was appealed by Intervenor and was affirmed in Island  
14 County's internal appeal process.

15 While the application was pending, appellant Sea Harvest  
16 reconsidered its purpose and identified certain smaller areas on the  
17 tidelands where tests could be conducted. An acre parcel was selected  
18 within Snohomish County to conduct initial "shakedown" testing of the  
19 modifications on the mechanical harvester. In addition, a 6-acre  
20 study area consisting of three separate 2-acre plots was selected  
21 within Island County based upon three different amounts of "fines" in  
22 the material on the study area. The study plots would be sited so  
23 that an additional 6 acres surrounding or adjacent to the study plots  
24 would be harvested if additional data were needed.

25 The application for a substantial development permit for the  
26 scaled-down study, proposal was considered by Island County and denied  
27

1 on December 20, 1982. The denial was appealed to this Board on  
2 January 21, 1983.

3 VII

4 Prehearing motions were heard by this Board on March 2, 1983. The  
5 Board denied motions for summary judgment relating to the instant  
6 cases. The Board also allowed Save Port Susan Committee to intervene  
7 in the appeals. The hearing on the merits was commenced on March 28,  
8 1983, and continued on subsequent days with continuances granted to  
9 appellant from time to time.

10 VIII

11 A similar mechanical Hanks-type harvester was described in the  
12 findings of a previous matter before the Board, English Bay  
13 Enterprises v. Island County, SHB No. 185:

14 VI

15 Appellant harvests clams using a mechanical  
16 harvester. The particular harvester used in this  
17 operation is commonly known as a Hanks type (or  
18 conveyor belt type) hydraulic clam harvester.  
19 Basically, it is a self-propelled watercraft to which  
20 is attached a steel mesh conveyor belt and a cutter  
21 head. The cutter head consists of a blade and water  
22 nozzles. During operation, the cutter head is  
23 lowered to the ocean bed. A jet of water shoots  
24 through each nozzle and scours the ocean bed. As the  
25 water craft moves forward, the bottom material is  
26 forced over the cutter blade, scooping in the top 12  
27 inches, onto a moving conveyor belt. Material of  
smaller dimension than the belt's mesh openings fall  
through the belt and back to the ocean floor. The  
larger material, which may include clams, is conveyed  
to the surface and sorted. The spoils are dumped  
into the water and fall to the ocean floor. The  
mechanical harvester requires two diesel motors, one  
for propulsion of the craft and the other for  
harvesting clams. Harvesting occurs only when there  
is sufficient water upon which to float the  
mechanical harvester.

VII

From the above description of the harvester and the harvesting process, it is clear that the particular physical space involved is subject to a direct and violent disruption. Much of the silt which is churned up does not fall back into the trench but remains suspended in the water for a significant amount of time. In addition, space adjacent to the harvested area is subjected to the indirect disruptive effects of the operation, e.g., increases in siltation, biochemical oxygen demand (BOD), turbidity, etc.

IX

Sea Harvest has added certain modifications to its harvester in an attempt to reduce the adverse impacts from its machine. First, the angle of the cutting head was changed. Fewer water nozzles would be used and at some lower water pressure (to be discovered) in order to avoid fully liquifying the sediment. Secondly, the top and sides of the conveyors belt assembly would be enclosed. Baffles would be placed under the conveyor. This modification is intended to slow water movement and, hopefully, to suspend lesser amounts of silt at operations in 8 to 10 feet of water. Thirdly, instrumentation would be installed to indicate the depth of the cutterhead to the operator. Finally, to reduce noise, the water pump and diesel engines were encased. A propeller deflector plate has been used on the harvester for many years to reduce the scouring of shallow intertidal beds. However, the catamaran design of this piece of equipment, with the conveyor and propeller along the same longitudinal axis, would further dispense the turbidity plume created during harvesting. Expert and lay opinions conflict on the effectiveness of the added modifications

1 to reduce adverse effects over that experienced with an unmodified  
2 harvester. Such opinions also differ with respect to the need for  
3 bench testing being accomplished before shakedown operation in a  
4 one-half acre plot to test the added modifications.

5 X

6 Sea Harvest does not intend or propose to perform laboratory or  
7 bench testing of a model of its modified harvester before the  
8 shakedown tests are conducted in Snohomish County. Laboratory or  
9 bench testing would indicate the efficacy of the modifications made  
10 without causing any adverse impacts to the environment. On the other  
11 hand, very limited shakedown tests on two parcels of one-half acre  
12 each of the actual modified harvester would not by itself result in  
13 significant, permanent damage to the surrounding area of 20,000 or so  
14 acres.

15 XI

16 Sea Harvest proposed a shakedown period on a half-acre area for  
17 mechanical adjustments to the harvester and to initiate baseline  
18 studies. Another half acre would be harvested to evaluate the  
19 performance of the modified harvester. Thereafter the "lead agency"  
20 would determine whether the study should proceed based upon improved  
21 performance of the harvester. If the study continues, six acres would  
22 be harvested and operations monitored. An interim (or final) report  
23 and evaluation of environmental impact will be made. The agency would  
24 determine whether the study was completed, or that more study was  
25 needed, or that other action be taken. Further study could be

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB Nos. 82-39 & 83-3, ECPA 14

conducted on up to six additional acres. Thereafter a final report would be submitted.

The study is intended to assess the disturbances upon humans and waterfowl from noise associated with harvesting activities, monitor turbidity levels and water quality levels, monitor sediment transport and deposition outside the study area from harvesting and erosion, and assess the long-term damage to existing sedimentary structures.

The study is limited in scope, and is not intended to discover information relating effect of sediment upon habitats, composition of the materials dredged, microfauna, and water currents. The study would primarily assess effects which can be characterized as those which are visually noticeable. The study would not, by itself, provide information adequate to create the basis upon which full scale commercial harvesting could commence on appellant's leased tidelands.

## XII

In its proposed study Sea Harvest assumes that the modification will insure that the trenches remaining after harvesting would have an average depth of 10 inches. (Exhibit A-1, page 8.) In its proposed evaluation of the modifications on the one-half acre plots, Sea Harvest would deem the performance of the harvester better than the unmodified version if there were an average trench refill of 8.5 inches (as compared with 9 inches on an unmodified version) and shell breakage, turbidity and noise standards were met. (Exhibit A-4, page 16.) If the shakedown performance tests show that the risk of environmental damage is insufficient to terminate the study, the remaining study plots would be harvested.

1 XIII

2 A hydraulic permit issued by the Departments of Fisheries and Game  
3 set forth time limitations for the initial testing portion of the  
4 study and for maintenance of water quality during the test. The  
5 permit does not allow commercial clam harvesting and is limited to the  
6 smallest practical size to evaluate the modifications. The permit  
7 expired on September 9, 1983.

8 XIV

9 The Stillaguamish River strongly influences the sediment and  
10 hydraulic processes in the Port Susan and Livingston Bay areas. About  
11 16,000 metric tons of sediment are brought into the area each year and  
12 spread over a 20 square kilometer area. Appellant's expert opined  
13 that the sedimentation impacts from the harvester study would not be  
14 apparent in the area.

15 XV

16 The upper Port Susan area is of major biological significance. It  
17 supports over 100,000 wintering ducks and other birds and mammals.  
18 The noise expected from the harvester would not have a disruptive  
19 effect on birds, especially for the relatively short testing period.

20 The marsh vegetation is extending seaward about 60 feet each  
21 year. The seaward edge is the most productive and active section of a  
22 marsh. The marsh holds high value to waterfowl for food, cover, and  
23 breeding.

24 Eelgrass is valuable to waterfowl as food. Organisms in the  
25 benthic community are also thought to be an important source of food.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER

SHB Nos. 82-39 & 83-3, ECPA 14

Clam dredging would eliminate seagrasses and disrupt the benthic community in the harvesting path. The proposed study does not consider the effect upon seagrasses and the benthic community.

#### XVI

There apparently are viable alternatives to mechanical harvesting in Port Susan and Livingston Bay. These alternatives include hand digging and hand-held hydraulic harvesters.

#### XVII

Property values along the shoreline would not be significantly affected by the limited test proposal. There may be detrimental impacts to such values from widespread commercial mechanical harvesting. The decrease in value would be related to detrimental aesthetic impacts.

#### XVIII

The Snohomish County Shoreline Master Program (SCSMP) requires compatible, orderly development<sup>1</sup>, provides for site performance standards to developers<sup>2</sup>, and provides for preservation, protection, and restoration of unique and non-renewable resources while encouraging best management practices for a sustained yield from renewable resources.<sup>3</sup>

The proposal would be located within a conservancy environment. Applicable policies give preference to uses which do not deplete the

- 
1. Shoreline Use Element Goal and Policy, SCSMP, page D-2.
  2. Shoreline Use Policy, SCSMP, page D-2.
  3. Conservation Element Goals and Policies, SCSMP.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER

resources, restrict new development to those compatible with natural limitations and those not requiring extensive alteration of the land-water interface, prohibit hazardous activities, and prohibit development which would permanently strip the shoreline of vegetative cover or cause substantial erosion, sedimentation or impairment of fish and aquatic life.<sup>4</sup>

Aquaculture is permitted in the conservancy environment if it conforms with the general regulations and if it does not significantly alter the natural ecosystems.<sup>5</sup> The mechanical harvesting of clams is considered an activity subject to the provision for aquaculture.

#### XIX

The Island County Shoreline Master Program (ICSMP) places the proposed activity in an aquatic environment. The mechanical harvesting of clams, including the proposed study, is an activity expressly excluded from the provisions for aquaculture. Section 16.21.020(K); 16.21.055. The activity is identified as an "unclassified development" subject to "any or all" applicable use requirements. Section 16.21.035(G). Those requirements deemed applicable include aquaculture<sup>6</sup>, commercial development<sup>7</sup> and dredging use regulations.<sup>8</sup>

---

4. Page E-10, SCSMP.

5. Page E-10, SCSMP.

6. Section 16.21.055; Chapter III(b) ICSMP.

7. Section 16.21.065.

8. Section 16.21.075.



( (

1 No inconsistency is apparent with the aquaculture regulations  
2 except those which amount to "nuisance factors."<sup>9</sup> Given the limited  
3 scope of the project, there should be no "excessive noise or odor"  
4 from the activity.<sup>10</sup>

5 The definition of a "commercial development" incorporates "those  
6 uses which involve wholesale and retail trade or similar business  
7 activities."<sup>11</sup> The proposed activity does not fall within the  
8 meaning of "commercial development."

9 XX

10 The definition of "dredging" in the ICSMP includes the "removal of  
11 earth, sand, gravel, silt or debris from the bottom of a . . . bay or  
12 other water body."<sup>12</sup> The most applicable use requirements are:

- 13 8. Dredging shall cause no more than minimal  
14 disruption of natural geohydraulic processes  
15 along shorelines.  
16 9. Dredging operations shall be scheduled so as not  
17 to interfere with the migratory movements of  
18 anadromous fish.  
19 10. Dredging shall not cause unnecessary  
20 interference with navigation or infringement  
21 upon adjacent shoreline uses, properties, or  
22 values.<sup>13</sup>

23 The proposed test activity is limited in area to, at most, thirteen  
24 acres. The disruption to the natural geohydraulic processes would be  
25 minimal to the Port Susan and Livingston Bay areas. With additional

---

26 9. Section 16.21.055, ICSMP.  
27 10. Id.  
28 11. Section 16.21.065.A. ICSMP.  
29 12. Section 16.21.075, ICSMP.  
30 13. Id. See also Chapter III(p 59).

1 conditions relating to scheduling of operations and minimizing  
2 infringement upon adjacent shoreline uses, properties or values, the  
3 proposed test could be consistent with the above provision.

4 XXI

5 The Environment Development Policies for an aquatic environment  
6 gives priority to those marine use activities which create the least  
7 environmental impact on tidelands.<sup>14</sup> Activities involving "filling"  
8 operations must be done in a manner so as not to create a substantial  
9 environmental impact.<sup>15</sup> The ICSMP has a policy of seeking the  
10 minimum environmental impact rather than prohibiting any environmental  
11 impacts in the aquatic environment.<sup>16</sup>

12 XXII

13 Sea Harvest does not object to provisions for additional  
14 reasonable monitoring and reporting requirements so that it may go  
15 forward with its tests.

16 XXIII

17 Any Conclusion of Law which should be deemed a Finding of Fact is  
18 hereby adopted as such.

19 From these Findings the Board comes to these  
20

---

21 14. ICSMP, p 72.

22 15. ICSMP, p 73.

23 16. These policies also reflect those set forth in the Shoreline Use  
24 Element, page 46, ICSMP. The conservation goal and policies of the  
25 ICSMP--to assure preservation and continued utilization of the unique,  
26 fragile and scenic resources--are reflected in the use regulations.  
27 ICSMP, page 47.

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and subject matters of this proceeding.

II

RCW 90.58.140(2)(b) provides that a substantial development permit shall be granted

After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and the provisions of chapter 90.58 RCW.

In any review of a decision to grant or to deny a permit, the person requesting the review has the burden of proof. RCW 90.58.140(7).

III

The proposed substantial development appears to be inconsistent with the provisions of the relevant master programs. Specifically, there are insufficient study parameters and performance standard expectations to create an adequate information base upon which to evaluate the viability of using a mechanical clam harvester at the subject site. The study should include additional information so that the opportunity to evaluate whatever environmental impacts which may occur is not lost.

IV

For the same reasons, the proposed substantial development is inconsistent with RCW 90.58.020. Although appellant's efforts appear to attempt to reduce adverse environmental impacts, the study and the

1 evaluation of the harvester fall short. If the harvester performance  
2 is to be fairly evaluated with a purpose of harvesting over a larger  
3 area, the study and its performance standard expectations are  
4 insufficient. We reaffirm our earlier view of mechanical harvesting  
5 in this area:

6 The SMA does not prohibit all developments on  
7 shorelines. Rather, it mandates planning of  
8 reasonable and appropriate uses to prevent harm from  
9 uncoordinated and piecemeal development of the  
10 shorelines. RCW 90.58.020. In so planning, private  
11 property rights consistent with the public interest  
12 are protected.

13 Generally speaking, the mechanical harvesting of  
14 clams is a "reasonable and appropriate" use of the  
15 shoreline. However, to be consistent with the policy  
16 of RCW 90.58.020, this use must protect against  
17 adverse effect to the public health, the land, and  
18 its vegetation and wildlife, the water and its  
19 aquatic life, and public rights of navigation. A use  
20 which, as proposed, does not adequately protect these  
21 concerns may become consistent with the foregoing  
22 policy provided appropriate conditions and safeguards  
23 are imposed. A use which can never protect these  
24 concerns can be prohibited in favor of a consistent  
25 alternative use.

26 In the implementation of the policy of the Act,  
27 physical and aesthetic qualities of natural  
shorelines must be "preserved" unless the greater  
interest of the state and its people require  
otherwise. Port Susan Bay is a natural shoreline.  
However, to "preserve" does not mean banning all  
development. Preservation can be accomplished by  
preferring, i.e., limiting, only those uses which  
control pollution and prevent damage to the natural  
environment or which are dependent upon the use of  
the shoreline. Of those preferred uses which must, of  
necessity, alter the natural condition of the  
shoreline, priority is given to, inter alia, single  
family residences and industrial developments  
particularly dependent on the use of a shoreline.

Because of its dependency upon the shoreline,  
clam harvesting is a preferred use. Although it  
alters the natural condition of the shoreline, clam  
harvesting is given statutory priority to do so.

1 However, even with this priority, this operation must  
2 also protect against those adverse effects of concern  
in the policy of RCW 90.58.020.

3 Although the proposed clam harvesting operation  
4 is a preferred use, the effects of this use must be  
weighed against the need for protection and  
5 preservation of the shoreline. We conclude that  
appellant's proposed development does not protect  
6 against adverse effects to the land and its wildlife,  
the waters and its aquatic life, and the public's use  
7 of the water at the location and in the manner  
proposed herein. In particular, appellant's proposed  
8 development does not protect the waters of the state,  
but rather, is an unreasonable use thereof. We  
9 further conclude that there is no evidence or  
assurance that appellant's use has been or will be  
10 designed and conducted in a manner so as to minimize  
damage to the ecology and environment of the  
11 shoreline area, and minimize interference with the  
public's use of the water. Rather, the evidence  
12 shows that siltation of the water and beaches and  
destruction of the ecological balance has occurred  
13 and will continue to occur as a result of the  
operation. Substantial aesthetic and recreational  
14 values will be sacrificed with little, if any, public  
benefit. Although appellant has a property interest  
15 in the tidelands, it has no similar interest in the  
water, which belongs to the people. Preventing the  
16 degrading of water quality is a problem which  
appellant, who has created the problem, must solve.

17 Appellant has the burden of proof to show that  
its development is consistent with RCW 90.58.020. It  
18 has failed to so prove, or to offer a plan which  
would show that the foregoing concerns have been  
adequately addressed.

19 Conclusion of Law VI. SHB No. 185.

20 V

21 Intervenor's assertion that the declaration of nonsignificance  
22 under Chapter 43.21C RCW was in error was not proven.  
23  
24  
25

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB Nos. 82-39 & 83-3, ECPA 14

1  
2 VI

3 The orders of the counties denying the substantial development  
4 permit applications<sup>17</sup> should be affirmed without prejudice to  
5 appellant's reapplication for a modified study proposal. In such  
6 proceedings, the counties may prescribe such reasonable conditions and  
7 requirements as would allow the fair evaluation of the mechanical  
8 harvester. Such conditions may include the issuing of sequential  
9 permits conditioned upon the successful completion of each study  
10 component and the assurance for restoration of the shoreline resulting  
11 from activities undertaken.

12 VII

13 Any Finding of Fact which should be deemed a Conclusion of Law is  
14 hereby adopted as such.

15 From these Conclusions the Board enters this  
16  
17  
18  
19  
20  
21  
22  
23

24 17. Island County asserts that appellant must also apply for a  
25 conditional use permit. Such a permit was not before this Board. The  
26 requirement may be reviewed in a subsequent proceeding.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER  
SHB Nos. 82-39 & 83-3, ECPA 14

ORDER

The actions of Island County and Snohomish County denying the substantial development permits are affirmed without prejudice to Sea Harvest Corporation's reapplication for permits consistent with this decision.

DATED this 5<sup>th</sup> day of MARCH, 1984.

SHORELINES HEARINGS BOARD

David Akana  
DAVID AKANA, Lawyer Member

Gayle Bothrock  
GAYLE BOTHROCK, Chairman

Lawrence J. Faulk 3/5/84  
LAWRENCE J. FAULK, Vice Chairman

Rodney M. Kerslake  
RODNEY M. KERSLAKE, Member

Nancy R. Burnett  
NANCY R. BURNETT, Member

Richard A. O'Neal  
RICHARD A. O'NEAL, Member